

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON)

Guess Farm Equipment Company, Inc., d/b/a) Civil Action No. 2011-CP-17-0413
Guess Irrigation Company,)

Plaintiff,)

vs.)

Justice Family Farms, LLC, and)
Catfish Bay, LLC,)

Defendants.)

**PLAINTIFF'S MOTION
FOR PARTIAL
SUMMARY JUDGMENT**

Guess Farm Equipment Company, Inc.,)

Third Party Plaintiff,)

vs.)

Valmont Industries, Inc., d/b/a Valmont)
Irrigation, a/k/a Valley Irrigation,)

Third Party Defendant.)
_____)

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2015 AUG - 7 AM 11:12
CLERK OF COURT
DILLON COUNTY

TO: THE DEFENDANTS, JUSTICE FAMILY FARMS, LLC AND CATFISH BAY, LLC, AND THEIR ATTORNEYS, K. BRETT MARSTON, ESQUIRE AND SAMUEL F. ARTHUR, III, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Guess Farm Equipment Company, Inc., d/b/a Guess Irrigation Company ("Guess Irrigation"), by and through its undersigned counsel, moves before the Presiding Judge of the Dillon County Court of Common Pleas for an Order granting Guess Irrigation partial summary judgment on (1) certain of its claims against the Defendants, and (2) Justice Family Farms, LLC's ("Justice") Counterclaims against the Plaintiff. This Motion is made pursuant to Rule 56 of the South Carolina Rules of

Civil Procedure and on the grounds that the pleadings, depositions, answers to interrogatories, submitted affidavits, previous Orders of the court, and admissions on file show that there is no genuine issue as to any material fact, and Guess Irrigation is entitled to a judgment on certain of its claims and on the Defendant's Counterclaims as a matter of law.

More specifically, Guess Irrigation moves for summary judgment on the following causes of action in the Complaint and Justice's Counterclaim:

1. The First Cause of Action in the Complaint—Foreclosure of Mechanic's Lien on the Catfish Bay Project;
2. The Second Cause of Action in the Complaint—Breach of Contract against Justice Family Farms, LLC on the Catfish Bay Project;
3. Justice's First Counterclaim for Breach of Contract;
4. Justice's Second Counterclaim for Negligence; and
5. Justice's Third Counterclaim for Breach of Express and Implied Warranty.

This motion is made on the grounds that, at the conclusion of discovery, the Defendants have presented no evidence that creates a genuine issue of material fact to support their claims or to contest the Plaintiff's First and Second Causes of Action. All of the evidence shows that Guess Irrigation performed its obligations in accordance with the contract and in compliance with any warranties and further that Guess Irrigation was not negligent.

Justice alleges in its Counterclaim at paragraphs 61 and 62 that the parties agreed that time was of the essence and agreed to a completion date of April 15, 2011. The express language of the contract does not support those allegations. Justice has further made claims that Guess Irrigation should have designed an irrigation system that provides for more irrigation than what was agreed to. However, again, the plain language of the contract sets forth what the parties agreed to and the only evidence is that Guess Irrigation performed those obligations.

Additionally, Justice has basically alleged that there was a problem with the water supply to that system, and the contract between the parties clearly states that the customer, Justice Family Farms, LLC, is responsible for providing the well and pump installation and for contracting with the well driller. The contract states:

The price of the well and installation of the pump is shown for information only. Guess Irrigation does not provide well drilling and pump installation services. The customer will be responsible for providing the well and pump installation.

Thus, any failure of the system to have an adequate water supply was not the fault or responsibility of Guess Irrigation. There is absolutely no justification for Justice's refusal to pay Guess Irrigation its contract balance, and Guess Irrigation is entitled to judgment on its breach of contract and mechanic's lien foreclosure causes of action as a matter of law.

Furthermore, Guess Irrigation brought a third party claim against Valmont Industries, Inc. d/b/a Valmont Irrigation a/k/a Valley Irrigation ("Valmont") because Justice alleged the design of the irrigation system was defective. At the completion of discovery, however, Justice has produced no credible evidence of any design defect; in fact, all of Justice's qualified experts agreed that the design was not defective. Valmont has filed a summary judgment motion as to Guess Irrigation's third party claims, and Guess Irrigation further moves for summary judgment as to Justice Family Farms, LLC's Counterclaims to the extent the Counterclaims allege any defect or deficiency in the manufacture or design of the irrigation system. This motion is made on the grounds that despite Justice's allegations, Justice has failed to produce any evidence to support a claim that the irrigation system was defective in its design or manufacture. In that Valmont has a motion for summary judgment pending, and that motion addresses issues related to Guess Irrigation's motion, the two motions should be heard together to avoid potentially inconsistent results and to prevent prejudice to the Plaintiff.

In addition, Guess Irrigation moves for summary judgment on the three counterclaim causes of action for Breach of Contract, Negligence, and Breach of Express and Implied Warranty on the grounds that Justice has failed to create a genuine issue of material fact to support those causes of action.

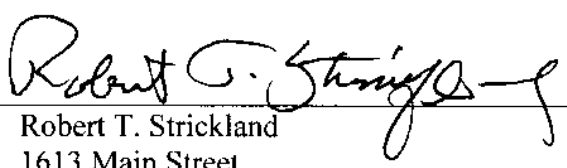
In addition, Guess Irrigation moves for summary judgment on the grounds that the damages claims alleged by Justice are speculative and not supported by credible facts or competent opinions.

This Motion is supported by the pleadings, depositions, answers to interrogatories, submitted affidavits, admissions on file, all other completed discovery, previous Orders of the court, any submitted memoranda, relevant statutes and case authority, the applicable Rules of Civil Procedure, and such other evidence and authority as the court may find it acceptable to consider.

The undersigned counsel certifies that under Rule 11 of the South Carolina Rules of Civil Procedure, there is no duty of consultation for a motion for summary judgment.

BARNES, ALFORD, STORK & JOHNSON, LLP

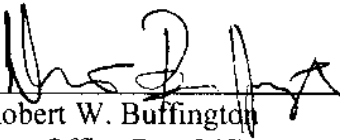
By: _____


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August 5, 2015
Columbia, South Carolina

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Attorneys for the Plaintiff

August 5, 2015

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Susan U. Jarrett, an employee of Barnes, Alford, Stork & Johnson, LLP, hereby state that on August 5, 2015, I served a copy of the within and foregoing ***PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT***, upon the parties to this action, through their attorneys of record, by depositing copies in the United States Mail, first class, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

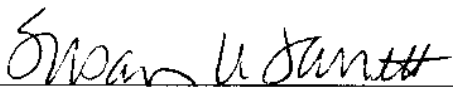
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Susan U. Jarrett
Legal Secretary
Barnes, Alford, Stork & Johnson, L.L.P.